IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.334 OF 2005
IN
SUIT NO.2614 OF 2004

Sharad Chandra Vinayak Dongre .. Plaintiff

Vs.

M/s.K.T.Dongre & Co. P.Ltd. .. Defendants

Mr.Sunil Patel with Mr.P.Sancheti for the plaintiff

Mr.D.Y.Chitnis for the defendants

CORAM: S.U.KAMDAR, J
DATE : 11TH APRIL 2005

P.C.:

1. The present Chamber Summons is taken out for a direction that the Vakalatnama filed by the defendant be taken on record. The delay in filing a Vakalatnama is of 182 days. By this application, condonation of delay is sought. This application has been opposed by the plaintiff by filing affidavit in reply to the present Chamber Summons being affidavit dt.11.4.05. My attention is drawn to the order dt.15.3.05 passed by Karnik, J in which interalia it is recorded that by an order dt.4.3.05 the application for winding up of company being Company Petition No.809 of 2003 is admitted and Provisional Liquidator has been appointed. It

seems that the said statement is erroneous as order dt.4.3.05 does not anywhere provide for appointment of Provisional Liquidator. It has also been brought to my notice that order passed in C.P. No.809/2003 by Khanvilkar, J., was challenged in Appeal and the same has been rejected. It has been contended on the aforesaid two grounds that the Chamber Summons for condonation of delay be dismissed.

2. I do not find any substance in the aforesaid arguments. It is well settled that a party cannot be deprived of defence on merits. Even if the statement was found to be erroneous which was made before the Karnik, J on 4.3.04 it has nothing to do to with the defendant filing Vakalatnama in the present proceedings and the matter be heard on merits. If the statement is erroneous it is open to the plaintiff to adopt appropriate legal proceedings and for which necessary action can be initiated against the defendant.

3. In my view there is no ground for refusing

to grant condonation of delay of 182 days. However, such grant of condonation of delay has to be on payment of cost. The learned counsel for the defendant has left to the court to fix payment of cost. Accordingly, defendants are directed to pay the cost quantified at Rs.5,000/- to the plaintff. Chamber Summons made absolute accordingly. No order as to costs.